

## Theoretical and legal substantiation of the realization of the rule of law by an attorney at law

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Опубліковано	Секція	УДК
20.03.2023	Право	347.9

DOI: <http://dx.doi.org/10.5281/zenodo.7763295>

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**Annotation.** The research is devoted to the general theoretical analysis of the impact of the rule of law principle on the functioning of the Bar in Ukraine. It is the rule of law principle which is the backbone component, compliance with which is a prerequisite for ensuring the quality and efficiency of work of any attorney-at-law.

Analysis of theoretical approaches to the main structural elements of the rule of law principle from the perspective of an attorney-at-law's activities as a representative of the rights and legitimate interests of a person in a court proceeding. An additional focus of the study is the interpretation of this principle in the Western doctrine, as well as its adequate consolidation in national legislation and its unconditional observance in the activities of law enforcement agencies. The European integration vector of our country's development should be based on strict adherence to the rule of law, since the main requirement of the European community in this area is to ensure the ability of state institutions to fully realize human and civil rights.

Today's challenges dictate the need to adopt new legislative acts, which put special pressure on the rule of law. In this case, the legislator must find a difficult balance between protecting fundamental human rights and freedoms and limiting interference with existing regulations. In this case, we mean not only the fundamental rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, but also national legislation. That is why the rule of law principle is of particular importance for the entire legal community, as they should direct their activities to protect the generally recognized principles and norms of international law, the main priority of which is the rights and freedoms of human and citizen.

**Keywords:** constitutional principles, rule of law, principles of the Bar, legal profession.

### Теоретико-правове обґрунтування реалізації адвокатом принципу верховенства права

**Анотація.** Наукове дослідження присвячено загальнотеоретичному аналізу впливу принципу верховенства права на функціонування адвокатури в Україні. Саме принцип верховенства права є тим системоутворюючим компонентом, дотримання якого є необхідною умовою, що забезпечує якісну і ефективну роботу будь-якого адвоката.

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Аналіз теоретичних підходів до основних структурних елементів принципу верховенства права здійснюється під кутом зору діяльності адвоката як представника прав і законних інтересів особи в судовому процесі. Додатковим фокусом дослідження є інтерпретація вказаного принципу в західній доктрині, а також його адекватне закріплення у вітчизняному законодавстві та беззаперечне дотримання в діяльності правоохоронних органів. Євроінтеграційний вектор розбудови нашої країни повинен базуватись на неухильному дотриманні принципу верховенства права, оскільки основною вимогою європейської спільноти, в цьому напрямку, є забезпечення спроможності державних інституцій реалізувати права людини і громадянина в повному обсязі.

Виклики сьогодення диктують необхідність прийняття нових законодавчих актів, які в свою чергу, створюють особливий тиск на принцип верховенства права. В даному випадку, законотворець повинен знайти складний баланс між захистом основоположних прав і свобод людини та обмеженням втручання в діючі нормативно-правові акти. В даному випадку, мається на увазі не лише фундаментальні права закріплені Конвенцією про захист прав людини і основоположні свободи, а й національним законодавством. Саме тому, принцип верховенства права набуває особливого значення для всієї адвокатської спільноти, оскільки вони мають спрямовувати свою діяльність на захист загальновизнаних принципів і норм міжнародного права, основним пріоритетом якого є права і свободи людини і громадянина.

**Ключові слова:** конституційні принципи, верховенство права, принципи адвокатури, адвокатська діяльність.

### Introduction

The Constitution in Ukraine is the main legislative act and a guide to the development of legal policy and statehood. Article 8 of the Constitution of Ukraine states that the principle of the rule of law applies in our country. This is a constitutional ideal which should be followed in the formation of public authorities and in the regulation of legal relations of various kinds.

However, the declaration of a constitutional principle does not mean automatically proper implementation. Experts argue that "in Ukraine, there are significant problems with the rule of law, which give rise to instability of state power, increased corruption, lack of proper access to justice, impartial and fair trial, lead to violation of fundamental rights and freedoms of man and citizen, exercise of functions and powers by the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine not provided for by the Constitution of Ukraine, etc." [1, p. 3]. It should be emphasized that this is far from an exhaustive list of problems that exist in the light of the implementation of the constitutional principle of the rule of law. The challenges of recent years, including pandemic threats and war, have also complicated the realization of many citizens' rights and freedoms, transformed and modified the social sphere of communications.

*The purpose of this article* is to conduct a constitutional study of the rule of law principle in the organization and activities of the Bar.

*Research status.* Many scholars, in particular S. Holovaty, I. A. Kravchenko, Y. O. Kostkina, O. M. Krukevych, S. Y. Levytska, M. V. Onishchuk, A. S. Slavko, and others, have studied the issues of functioning of the constitutional principles of law, the rule of law and the proper structure of government; theoretical and sectoral developments in the field of legal status and peculiarities of organization and activities of the Bar are represented in the works of Y. O. Zahumenna, S. O. Ivanitskyi, N. V. Kniazeva, N. M. Bakayanova, N. I. Bochuliak and others.

Despite the fact that the concept of the rule of law is recognized as the basis of the state system and enshrined in a number of constitutions of states that declare themselves democratic, the legal provisions related to this legal category are rather general and do not provide an unambiguous picture of it. In addition, even the classification of the principles of the Bar is considered differently in the studies of domestic scholars, and therefore the current state of the doctrine does not contain a holistic, generally recognized approach to the coverage of this issue. Therefore, there is a need to generalize the provisions of the elemental composition of this principle in terms of the genesis problems of development and theoretical and legal understanding.

### Results

The principle of the rule of law is one of the leading constitutional principles of any rule-of-law and democratic state. It reveals its essence and purpose not only in combination with other constitutional principles, but also as an independent vector that directs social relations in the right direction.

Strict adherence to this principle is extremely important and necessary for the adequate functioning of not only public authorities, but also for all other institutions whose activities are inextricably linked to the protection of human rights and freedoms.

The changes that have taken place in our society over the last year could not but affect the basic principles of the activities of state bodies in general, and certain institutions (such as the bar) in particular.

Y. O. Zahumenna and E. M. Najafli quite reasonably note that the establishment of the rule of law principle ensures the protection of fundamental rights and freedoms of a person not only from other citizens, but also from unreasonable interference by the State, its bodies and their representatives, acting as a factor in deterring the latter from such a "temptation" as abuse of power, which usually arises due to the acquisition of a set of special powers [2, p. 89].

Investigating the issue of the rule of law principle in civil proceedings, O. Ovcharenko notes that the rule of law principle as justice is a mega-principle and a universal standard covering all areas of legal regulation and the judicial system. All the activities of the judicial system in the global dimension should be aimed at restoring the imbalance of justice and the rule of law as the purpose of the principles, as well as their individual components [3, p. 210]. The main results of her research are that the scientist has interpreted the rule of law as a concept on which the philosophy of modern judicial proceedings, law application and law understanding is based.

However, in the science of constitutional law, the issue of enshrining the principles of law in official documents of the State is quite acute, and the rule of law is no exception. Studying the issues related to the method of enshrining the principles of law, S. O. Ivanitsky notes that the approach according to which the principles can be directly formulated in the rules of positive law (textual expression) or follow from their content (substantive enshrinement) is generally recognized. The first method of fixation should be a priority, since the second creates certain inconveniences for law enforcement officers due to the need for additional time spent on analytical work with the legal framework [4, p. 178].

Analyzing the textual expression of the rule of law principle, can be stated that Article 8 of the Constitution of Ukraine is declarative in nature, proclaiming the rule of law in our country. However, the further content of this article does not contain a deep theoretical analysis of this principle, but outlines its features only by the legal force of the Constitution, legal acts and the guarantee of the right to judicial protection.

For a detailed characterization of the content of the rule of law principle, it is necessary to refer to the features inherent in the principles of law. Consolidating the scientific views on this issue, N. V. Knyazeva argues that legal principles have the following features:

- objective predetermination, which is expressed in the interconnection of principles and a certain type of activity;
- the rule of regulation, as principles are the elements on which a legal institution, industry or activity is built and operates;
- expression of group interest, because the real views of those entities that are related to the area within which the legal principles exist.

If all this is transferred to the field of advocacy, then the principles of professional activity in this area are guiding ideas that actually affect the organization of the work of attorneys, its effectiveness and acceptability from the point of view of moral ethics [5, p. 80].

Regarding the principles of the Bar, N. Bakayanova most successfully distinguishes their characteristic features, pointing out that the principles of the Bar have their own characteristics, in particular:

- 1) each principle of the Bar contains a certain idea that constitutes its content;
- 2) such an idea (principle of the Bar) is directly or indirectly enshrined in the regulatory legal acts (both acts of general character and acts of special legislation on the Bar);
- 3) the principles determine the typical features of the Bar;
- 4) the principles of the Bar are characterized by considerable stability and durability as compared to the ordinary rules of law;
- 5) they constitute a certain system in which one of the principles may derive from another or be its guarantee [6, p. 145-146].

Thus, having acquired legal expression in the sources of law determined by the state, the principles receive state support and guarantees, become mandatory for application within the established limits, directly and indirectly regulating social relations [4, p. 180].

The "Principles of Practice of Law" are generalized, fundamental, relatively stable principles and provisions reflecting social values, including those embodied in the national legal system and enshrined in the norms of the current legislation, which are implemented by advocates in the course of their professional activities, including the provision of legal advice, legal support and representation of persons, protection of their rights, freedoms and interests, and the solution of a number of organizational, functional, moral and ethical issues [2, p. 24].

When classifying according to certain criteria into certain groups, in particular, the principles of organization of the Bar and the principles of the Bar, some scholars conclude that the concepts of "the principles of the Bar" and "the principles of the Practice of Law" are related to each other as a whole and a part [7, p. 36]. However, not all scholars support such a division, arguing that when studying the legal principles relating to certain legal institutions, legal science uses the term "principles of organization or operation of a legal institution" rather than "principles of a legal institution" [6, p. 144]. In this case, we can only support the position of N. M. Bakayanova regarding the division into the principles of organization of the Bar and the principles of the Bar, and the inexpediency of distinguishing the principles of the Bar. In turn, those principles which take place both in the organization and in the activities of the Bar can be considered general principles.

Considering the special legislation that regulates the implementation of the principles of law in the activities of the Bar, it should be noted that Article 4 of the Law of Ukraine "On the Bar and Practice of Law" expressly states that "Practice of law shall be based on the principles of the rule of law, legality, independence, confidentiality and avoidance of conflicts of interest". At the same time, the predecessor of this legal act (meaning the Law of Ukraine "On the Bar" No. 2888-XII of December 19, 1992, which expired with the adoption of the new law) used the term "rule of law".

In this regard, S. Holovaty in his thorough monograph asks a very pertinent question: "what exactly is the basis of the current constitutional order - the rule of right or the rule of law? The principle of the rule of law was enshrined in numerous normative acts adopted after

Ukraine gained independence. All this is due to the fact that lawmakers literally translated the principle of "the rule of law" without going into a detailed analysis of the translation. In particular, "the rule" is not only a "rule", "principle" or "norm", this term can mean "board", "domination" or "dominion". In turn, for the term "the law" (literally, the statute), the Ukrainian equivalent "right" is more appropriate [8, p. 1365].

The borrowing of laws and legal institutions from one country to another is used as a way to improve the legal system. The problem is that the legal acculturation of foreign laws or legal institutions does not occur in a legal or cultural vacuum. Difficulties in the reception of law are especially evident when borrowing takes place in the form of full absorption, but even selective borrowing has its own complications [9].

In implementing the rule of law, the advocates should prioritize the rights, freedoms and interests of their clients and other people and refrain from actions that may violate them, let alone limit them. All relations that arise within the scope of the Practice of Law should be based on legal norms, and this activity itself should be carried out only with the help of the rights granted to each attorney by law - this approach will guarantee the rights and freedoms of individuals and legal entities, as well as their highly qualified defense in case of violation [2, p. 91-92].

Having analyzed the issue of the principles of professional activity of attorneys-at-law in our country, based on the norms of current legislation and the work of scientists in the study of related theoretical and legal phenomena, P. V. Kniazeva concludes that the Bar in Ukraine is a self-governing institution that exists to provide legal protection, representation and other legal services [5, p. 82]. In support of this position, it should be added that the realization of its tasks and functions is unthinkable without clear and strict adherence to the fundamental principles of law by the attorney in his or her daily activities. Guided by its constitutional purpose, the Bar takes an active part in building the rule of law, an integral feature of which is the recognition and observance of the rule of law.

In its efforts to join the European community, Ukraine is reforming the regulatory and institutional mechanisms of legal regulation in all areas of public relations. This raises the question: what is the purpose of the European Union's imposing such strict requirements on candidates for membership in the organization? The overall goal of such actions is to ensure a higher and more sustainable level of protection of the Convention for the Protection of Human Rights and Fundamental Freedoms in the states subject to European supervision.

When studying the implementation of the rule of law as a key value of the European Union, some scholars insist that the organization faces two fundamental tasks:

- remedying the damage caused by member states as a result of non-compliance with or deviation from the rule of law standards;
- guaranteeing the prevention of future, deviations from the promise to uphold the rule of law [10].

In the process of bringing national legislation in line with European standards, the bar must be able to fulfil the task of effectively ensuring human rights. This means that the foundations of the national legal order must be inviolable, and states that do not adhere to the rule of law cannot count on respect and support from the international community.

### **Conclusion**

In view of the above, it can be stated that the rule of law is one of the universal, legal standards for the functioning and development of any democratic state. Compliance with this principle is a prerequisite for the protection of human rights from encroachments not only by other parties to relations, but also by public authorities.

The European integration vector of our country's development should be based on strict adherence to the rule of law, since the main requirement of the European community in this

direction is to ensure the ability of state institutions to fully realize human and civil rights. This is exactly the task assigned to the attorney-at-law as a representative of a person in a lawsuit.

The realization by the advocates of their tasks and functions is unthinkable without clear and strict adherence to the fundamental principles of law in their daily activities. By performing their main functions, each advocate influences the formation of our country, endowing it with the features of a democratic and legal participant in international relations. In turn, an integral, basic feature of all civilized states is the recognition and observance of the rule of law.

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